

United States District Court
Central District of California

BONDED APPAREL, INC.,

Plaintiff,

v.

R2D APPAREL, INC.; RABIN
ARREHBORI; MRR2, INC.; REYMOND
ARREHBORI; ROSS STORES, INC.
d/b/a ROSS DRESS FOR LESS;
BURLINGTON STORES, INC. d/b/a
BURLINGTON COAT FACTORY; THE
TJX COMPANIES, INC. d/b/a T.J.
MAXX d/b/a MARSHALLS; DOES 1
through 110, inclusive; M.R.R. FABRIC,
INC.,

Defendants.

Case No. 2:15-cv-04406-ODW (JEM)

**ORDER DENYING *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION [13]**

I. INTRODUCTION

On June 10, 2015, Plaintiff Bonded Apparel, Inc. filed the original Complaint. (ECF No. 1.) On June 18, 2015, Bonded Apparel filed the First Amended Complaint (ECF No. 10) and the pending *Ex Parte* Application for Temporary Restraining Order and Preliminary Injunction (“TRO Application”) (ECF No. 13). In its First Amended Complaint, Bonded Apparel alleges that Defendants are currently infringing on its

1 clothing-line trademark. (FAC ¶¶ 25–60.) In its TRO Application, Bonded Apparel
 2 requests the Court to issue emergency equitable relief that would require Defendants
 3 to (a) immediately terminate all infringing conduct and (b) “freeze all funds payable to
 4 Retail Defendants stemming from the sale of [infringing] product.” (ECF No. 13-11
 5 at ii–v.) Bonded Apparel admits that “Defendants have not yet been personally served
 6 with copies of the Summons and Complaint or provided notice of this application.”
 7 (ECF No. 13 at 2.) Bonded Apparel justifies the *ex parte* nature of its TRO
 8 Application as follows: “If Plaintiff was required to provide notice of this application,
 9 Defendants, namely the Manufacturing Defendants, are likely to secrete their illicit
 10 proceeds, which will both irreparably harm Plaintiff by removing assets from this
 11 Court’s jurisdiction and frustrate the Court’s ability to exercise its authority to provide
 12 ultimate equitable relief, such as an accounting.” (*Id.* at 7.)

13 II. LEGAL STANDARD

14 A court may only issue an *ex parte* temporary restraining order only if “specific
 15 facts in an affidavit or a verified complaint clearly show that immediate and
 16 irreparable injury, loss, or damage will result to the movant before the adverse party
 17 can be heard in opposition” and “the movant’s attorney certifies in writing any efforts
 18 to give notice and the reasons why it should not be required.” Fed. R. Civ. P.
 19 65(b)(1); *see also* C.D. Cal. L.R. 7-19.2. Although the requirements in Rule 65(b) are
 20 stringent, they “reflect the fact that our entire jurisprudence runs counter to the notion
 21 of court action taken before reasonable notice and an opportunity to be heard has been
 22 granted both sides of a dispute.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters &*
 23 *Auto Truck Drivers*, 415 U.S. 423, 438–39 (1974). “The standard for issuing a
 24 temporary restraining order without notice to the adverse party is very stringent, and
 25 the burden on the movant to show why notice is not required is accordingly very
 26 high.” *Shallman v. Ocwen Loan Servicing, LLC*, No. 14-cv-0863, 2014 WL 2533836,
 27 at *2 (C.D. Cal. June 5, 2014). “The Ninth Circuit has cautioned that there are very
 28 few circumstances justifying the issuance of an *ex parte* TRO.” *Caldwell v. Wells*

1 *Fargo Bank, N.A.*, No. 13-cv-1344, 2013 WL 3789808, at *3 (N.D. Cal. July 16,
2 2013) (citing *Reno Air Racing Assoc., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir.
3 2006)).

4 III. DISCUSSION

5 Bonded Apparel fails to satisfy “very high” burden for issuing an *ex parte*
6 temporary restraining order. *Shallman*, 2014 WL 2533836, at *2. The pending TRO
7 Application seeks numerous equitable remedies that are approved under the Lanham
8 Act. For example, Bonded Apparel could potentially obtain an injunction preventing
9 future infringement as well as a disgorgement of profits. *See* 15 U.S.C. 1125(a)
10 (authorizing courts to “grant injunctions, according to principles of equity and upon
11 such terms as the court may deem reasonable”). This authorized equitable relief,
12 however, is not freely granted without notice to the nonmoving party.

13 In *Reno Air Racing*, the Ninth Circuit set forth the requirements for granting *ex*
14 *parte* equitable relief in trademark infringement cases. 452 F.3d at 1125. The Ninth
15 Circuit instructs as follows:

16 In cases where notice could have been given to the adverse
17 party, courts have recognized a very narrow band of cases in
18 which *ex parte* orders are proper because notice to the
19 defendant would render fruitless the further prosecution of
20 the action. In the trademark arena, such cases include
21 situations where an alleged infringer is likely to dispose of
22 the infringing goods before the hearing. To justify an *ex*
23 *parte* proceeding on this latter ground, the applicant must do
24 more than assert that the adverse party would dispose of
25 evidence if given notice. Plaintiffs must show that
26 defendants would have disregarded a direct court order and
27 disposed of the goods within the time it would take for a
28 hearing . . . and must support such assertions by showing

1 that the adverse part has a history of disposing of evidence
2 or violating court orders or that persons similar to the
3 adverse party have such a history.

4 *Id.* at 1131 (internal citations and quotation marks omitted).

5 Here, Bonded Apparel makes no showing that Defendants are likely to hide
6 assets if served process and provided notice of the TRO Application. There is no
7 indication that Defendants' bank accounts are the only assets that could satisfy a
8 judgment, and in fact, it appears that Defendants have property assets within the
9 Court's reach. (*See* ECF No. 13, Ex. 5.) There is simply no reason why the Court
10 should issue an injunction without allowing Defendants to be heard. Bonded
11 Apparel's bald assertion that Defendants may "secret their illicit proceeds" is not
12 enough to carry its "very high" burden for *ex parte* relief. *Shallman*, 2014 WL
13 2533836, at *2. The Court recognizes that it can freeze assets at the onset of litigation
14 if the moving party shows "a likelihood of dissipation of the claimed assets, or other
15 inability to recover monetary damages, if relief is not granted." *Johnson v. Couturier*,
16 572 F.3d 1067, 1085 (9th Cir. 2009). However, there is no law authorizing *ex parte*
17 relief under the circumstances presented in this case. The Court finds that Bonded
18 Apparel can refile its request for relief after it provides notice to Defendants, and the
19 Court will make the appropriate determination after hearing arguments from both
20 sides.

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1 **IV. CONCLUSION**

2 Bonded Apparel failed to prove “immediate and irreparable injury” that would
3 result if Defendants were given the opportunity to be heard in this case. Fed. R. Civ.
4 P. 65(b)(1). For the reasons discussed above, the Court **DENIES** Bonded Apparel’s
5 *Ex Parte* Application for Temporary Restraining Order and Preliminary Injunction in
6 full. (ECF No. 13.)

7 **IT IS SO ORDERED.**

8
9 June 19, 2015

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12 **OTIS D. WRIGHT, II**
13 **UNITED STATES DISTRICT JUDGE**
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